

Bail Slip

The Appellant No.2/A2 viz., Sonia Devi was directed to be released on bail in and by the order of this Court dated 20.12.99 in CrI.M.P.No.9967/99.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11-01-2007

CORAM

THE HONOURABLE MR.JUSTICE R.REGUPATHI

CrI. Appeal No.929 of 1999

1.Babulal
2.Sonia Devi

.. Appellants/Petitioners

Versus

State by:

The Assistant Commissioner of Police,
Law and Order, Chennai.
Cr.No.435/1997

.. Respondent/Complainant

G-2 Periamet Police Station.

For Appellants : Mr.M.Mohammed Rafi

For Respondent : Mr.N.Kumanan
Government Advocate

PRAYER: Appeal filed under Section 374 of Cr.P.C to set aside the order of the V Additional Sessions Judge I/C II Additional Sessions Judge, Chennai in S.C.No.108 of 1998 dated 15.11.1999.

J U D G M E N T

Originally, there were three accused in the case, A-1 and A-2 are the in-laws of the deceased. A-3 is the sister-in-law of the deceased. The deceased after her marriage, on 12.12.1994, was living at the scene of occurrence. Her husband was working as a manager in a Company. The deceased at the time of her death was having one year old child.

2. A-1 and A-2 have been convicted for an offence under Sections 498 and 304-B IPC and sentenced to undergo three years and seven years respectively. A-3 had been acquitted by the trial Court. Both A-1 and A-2 preferred appeal. Pending appeal, on 16.02.2004, the first accused died. The learned Government Advocate produced the death certificate and confirmed the death of the first accused. On account of that the offence committed by the first accused abates and the only appellant is A-2, who is the mother-in-law of the deceased.

3. The case of the prosecution is that P.W.3 a neighbour of the deceased after coming to know about the smoke emerging from inside the residence of the deceased, reported the same to the office of the husband of the deceased, wherein, P.W.1 and P.W.2 were working as staffs. P.W.1 and P.W.2 came to the scene of occurrence and along with P.W.3, entered into the residence and found the deceased lying at the kitchen with burn injuries. The child was crying at the next room. P.W.1 thereafter reported the same to the police, by way of Ex.P-1 complaint, on 10.04.1997 at about 11.15 a.m P.W.2 also accompanied P.W.1.

4. P.W.10 the Inspector of Police received the complaint from P.W.1 at 11.15 a.m and registered a case in Crime No. 455 of 1997 under Section 174 Cr.P.C and forwarded the case for enquiry to the Tahsildar and Ex.P-7 is the FIR. P.W.8 is the Tahsildar, who conducted enquiry and also examined P.Ws.4 to 6 namely the brothers and uncle of the deceased. He has also examined P.W.1 to P.W.3. On 12.04.1997, P.W.8 conducted inquest over the dead body of the deceased in the presence of the witnesses and Ex.P-3 is the inquest report. He has also prepared a rough sketch-Ex.P-4 and sent a requisition for conducting post mortem. P.W.7 on receipt of the requisition from P.W.8, conducted post mortem over the dead body of the deceased on 12.04.1997 at about 1.20 p.m and on examination of the dead body, he found 100% burn injuries and has given opinion that the death of the deceased was due to shock and burns. Ex.P-2 is the post mortem report.

5. P.W.12 is the investigating officer who has visited the scene of occurrence on 10.04.1997. He has prepared the observation mahazar-Ex.P-5 and also rough sketch. After examination of P.W.4 to P.W.6 and after receipt of the report from the Tahsildar, the case has been altered to one under Section 498 A and 304B IPC and report Ex.P-9 was sent to the learned Magistrate. On 12.04.1997 A-1 to A-3 have been arrested and on the next day they have been remanded to judicial custody. On conclusion of the investigation, on 02.09.1997, a final report has been filed.

6. Learned trial Judge after examining the witnesses P.W.1 to P.W.12, questioned the accused under Section 313 Cr.P.C, for which, the accused denied the commission of the offence. Thereafter the trial Judge after hearing the counsel for the prosecution and the defence convicted the accused as aforementioned and aggrieved against that the present appeal has been preferred before this Hon'ble Court.

7. The learned counsel appearing for the appellants submit that P.W.1 to P.W.3 did not improve the case of the prosecution and they are a formal witness for reporting the occurrence to the police. P.W.4 and P.W.5 are the brothers of the deceased and on the issuance of summons, they have reached the place of occurrence on 12.04.1997. Their statements were recorded by the Tahsildar, as well as the investigating officer. In the evidence, they have stated about the performance of the marriage of the deceased and as per their customs, they have given six sovereigns of gold, a bureau and a dressing table.

8. It has been further alleged that occasionally there was some quarrel between the deceased and the appellants and this they came to know through the letter sent by the deceased to her father. It is submitted

that though it has been stated that P.W.5 has produced two letters to the investigating officer and though the investigating officer accepted the receipt of such letter, it has been not marked during the course of the trial. Even the contents of the letter is not spoken to by P.W.4 and P.W.5. Quarrel in relation to dowry is not mentioned and further P.W.4 and P.W.5 have not stated anything about the quarrel made with the deceased soon before her death and on a perusal of the evidence, it appears that the deceased visited Indore 9 months prior to the date of occurrence and only under such circumstances, the quarrel between the appellants and the deceased was mentioned. Subsequent to that there is no mention about the quarrel. In such circumstances, even accepting the evidence of P.W.4 and P.W.5, the allegation put forth by the prosecution is not substantiated.

9. P.W.6 is the uncle of the deceased who also corroborates the evidence of P.W.4 and P.W.5. Though P.W.6 has mentioned about the letter written by the deceased and came to know that the deceased was not happily living in the matrimonial house, no other allegations have been made to connect the appellants with the crime.

10. Learned counsel appearing for the appellants made a strong reliance on the opinion reached by the Tahsildar-P.W.7, on conclusion of the inquest, in which, it has been stated that on the previous day, namely on 09.04.1997, the second appellant alleged to have requested the deceased to change her saree as it is old and on account of that the deceased became unhappy. It has been opined by the Tahsildar that though the deceased had committed suicide by pouring kerosene by self immolation, there is no harassment on account of dowry. Apart from these materials, there are no other materials to substantiate the offence under Section 498A IPC and 304 B IPC. Learned counsel appearing for the appellants submit that P.W.3 also never mentioned anything about the quarrel between the deceased and the appellants, or other family members and in such circumstances, there is no material to substantiate the offence.

12. Per contra the learned Government Advocate submits that the evidence of P.W.4 to P.W.6, if accepted, the offence may be substantiated. However, the learned Additional Public Prosecutor fairly conceded that there are no sufficient materials to substantiate the offence alleged.

13. I have perused the materials available on record.

14. To start with, the opinion expressed by the Tahsildar P.W.7 assumes great importance. P.W.7 is the Tahsildar, who has conducted initial enquiry and after examination of the witnesses, including neighbours and P.W.4 to P.W.6, has come to a positive conclusion that there was no ill-treatment on account of the dowry and the deceased had committed suicide by self-immolation. Apart from the direction by the second appellant to change the saree of the deceased, there is no material to substantiate that the appellants ill-treated the deceased.

15. On a perusal of the evidence of P.W.4 to P.W.6, it appears that there was some quarrel 9 months prior to the date of occurrence between the appellants and the deceased and the details of such quarrel has not been mentioned in their evidence. Though it has been claimed that the deceased has written a letter to her father, her father has not been

examined as a witness in the case. Though it has been claimed by P.W.5 that two letters have been handed over to the investigating officer, those letters has not been marked. Even on a perusal of the evidence of P.W.4 to P.W.6, I do not find any quarrel or ill-treatment made by the appellants or any other members of the family to drive her to commit suicide. The request of the second appellant made on the day prior to the date of occurrence, in my considered view, may not be a sufficient reason for the deceased to commit suicide and with such materials, I am of the view that the prosecution cannot claim that the deceased was subjected to ill-treatment.

16. Therefore, in view of the facts and circumstances of the case, I do not find any positive material to connect the appellants with the crime, as alleged by the prosecution. Therefore, the judgment of the trial Court is set aside and the accused is acquitted of all the charges. In view of the death of the first appellant, as above mentioned, the offence in so far as the first accused is abated. The appeal is accordingly allowed. The bail bonds, if any, executed by the accused shall stand cancelled.

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

csH

To

1. The V Additional Sessions Judge (i/c) of
II Additional Sessions Judge, Chennai.
2. -do-Thro' The Principal Judge,
City Civil Court, Chennai.
3. The Assistant Commissioner of Police,
Law and Order, Periamet Police Station, Chennai.
4. The II Metropolitan Magistrate,
Egmore, Chennai
5. -Do-Thro' The Chief Metropolitan Magistrate,
Egmore, Chennai-8.
6. The Superintendent Central Prison, Vellore.
7. The Public Prosecutor, High Court, Madras.

CrI. Appeal No. 929 of 1999